

### Remarks

This is in response to the final Office Action mailed on December 15, 2004. Claims 29 and 38 are canceled without prejudice or disclaimer. Claim 24 is amended, support for the amendment being found, for example, at page 8, lines 26 and 27 of the present application. Claim 36 is amended to incorporate subject matter from claim 38, and claim 39 is amended to depend from claim 36. Claims 24-28, 31-37, and 39 remain pending, with claims 24, 31, and 36 being independent. Reconsideration and allowance are respectfully requested for the following reasons.

#### **I. Preliminary Note Regarding Claims 31-39**

It is respectfully noted that claims 31-35 are not noted as being allowed, but are not recited in any rejection in the Action. It is further noted that claim 35 is recited in the obviousness rejection in section 5 of the Action, but claim 35 depends from claim 31, which is not recited in any rejection. It is respectfully suggested that claims 31-35 are allowable. Reconsideration and allowance are respectfully requested.

Claim 38 is also not noted as being allowable, but is not recited in any rejection in the Action. Claim 38 is canceled, and subject matter from claim 38 is incorporated into claim 36. It is respectfully suggested that claim 36 is allowable. Reconsideration and allowance are respectfully requested.

#### **II. Claim Rejections - 35 U.S.C. § 102**

In section 2 of the Action, claims 24, 25, 27, 29, and 36 were rejected under 35 U.S.C. § 102(b) as being anticipated by McCarthy, IE 80484 B3. This rejection is respectfully traversed, and reconsideration is requested for at least the following reasons.

Claim 24 is directed to a proximity warning system for a fireplace. Claim 24 recites, among other limitations, a monitor module coupled to the fireplace and configured to automatically turn on when flames of the fireplace are generated to sense when an object enters a zone proximate to the fireplace.

An advantage associated with a system including a monitor module configured as recited by claim 24 is that false alarms issued when the fireplace is not in use can be reduced because

the monitor module is configured to automatically turn on when the fireplace is in use (i.e., when flames are generated).

McCarthy discloses an electronic fire guard that includes a power switch 5 that controls the power input to the device. McCarthy, Figure 2 and p. 7, ll. 30 and 31. When the switch is activated, power is supplied to the unit, and the unit enters an armed mode. McCarthy, p. 5, ll. 12, 13, and 18-20. Therefore, the guard disclosed by McCarthy is manually turned on and off by power switch 5.

Since McCarthy discloses a guard that is manually turned on using a switch, McCarthy fails to disclose or suggest a monitor module that automatically turns on when flames are generated, as recited by claim 24. Reconsideration and allowance of claim 24, as well as claims 25 and 27 that depend therefrom, are therefore respectfully requested for at least these reasons.

Claim 36 is directed to a method for warning when an object approaches a fireplace. Claim 36 recites, among other limitations, turning on a monitor module automatically when the fireplace reaches a given temperature.

Since McCarthy discloses a guard that is manually turned on using a switch, McCarthy fails to disclose or suggest turning on a monitor module automatically when the fireplace reaches a given temperature, as recited by claim 36. Reconsideration and allowance of claim 36 are therefore respectfully requested for at least these reasons.

### **III. Claim Rejections - 35 U.S.C. § 103**

In section 5 of the Action, claims 26, 28, 35, 37, and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy. This rejection is respectfully traversed, and the correctness of the rejection is not conceded.

However, claims 26, 28, 35, 37, and 39 all depend from one of claims 24, 31, and 36 and should be allowable for at least the same reasons as those provided herein for claims 24, 31, or 36, respectively. Reconsideration and allowance are respectfully requested.

### **IV. Conclusion**

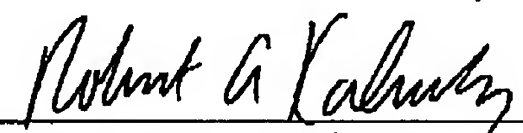
The remarks set forth above provide certain arguments in support of the patentability of the pending claims. There may be other reasons that the pending claims are patentably distinct

over the cited references, and the right to raise any such other reasons or arguments in the future is expressly reserved.

Favorable reconsideration is respectfully requested. Please contact the undersigned attorney with any questions regarding this application.

Respectfully submitted,  
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